

RECEIVED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

OCT 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Deployment of Wireline Services Offering) CC Docket No. 98-147
Advanced Telecommunications Services)

EX PARTE COMMENTS OF
THE OFFICE OF ADVOCACY,
UNITED STATES SMALL BUSINESS ADMINISTRATION
ON THE PAPERWORK REDUCTION ACT
PROPOSED INFORMATION COLLECTION REQUIREMENTS
IN THE NOTICE OF PROPOSED RULEMAKING

The Office of Advocacy of the United States Small Business Administration ("Advocacy") submits these Comments on the proposed information collections contained in the Federal Communications Commission's ("FCC" or "Commission") *Memorandum Opinion and Order and Notice of Proposed Rulemaking*,¹ in the above-captioned proceeding.

Congress established the Office of Advocacy in 1976 by Pub. L. No. 94-305² to represent the views and interests of small business within the Federal government. Its statutory duties include serving as a focal point for concerns regarding the government's policies as they affect small business, developing proposals for changes in Federal agencies' policies, and communicating these proposals to the agencies.³ Advocacy also has a statutory duty to monitor

¹ *In re Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, CC Docket No. 98-147, FCC 98-188 (rel. Aug. 7, 1998) ("NPRM").

² Codified as amended at 15 U.S.C. §§ 634 a-g, 637.

³ 15 U.S.C. § 634c(1)-(4).

and report on the Commission's compliance with the Regulatory Flexibility Act of 1980 ("RFA"),⁴ as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Subtitle II of the Contract with America Advancement Act.⁵

The Paperwork Reduction Act of 1995 ("PRA"),⁶ requires the FCC to review each proposed collection of information on the basis of several criteria, including the agency's need for information and whether such requirements are an undue burden on the entities subject to the requirements. Advocacy recognizes that the proposed information collection estimates published in the Federal Register are exactly that – estimates. Nonetheless, the Commission must develop a specific, objectively supported estimate of burden.⁷ The agency must consider the cost and burden of the proposed collection on smaller entities and alternatives such as: (1) establishing differing compliance requirements that take into account the resources available to those who are to respond; (2) simplification of compliance and reporting requirements; and (3) exemptions from compliance requirements.⁸ To this end, an Initial Regulatory Flexibility Analysis ("IRFA") required by the RFA, as amended, becomes an important tool in assisting the FCC fulfill its PRA duties, as well as its RFA duties.

To comply with the RFA, an IRFA must describe adequately the burdens of the proposed rule, including all of the potential reporting, recordkeeping, and other compliance requirements, and identify the professional skills needed to meet those requirements.⁹ Therefore, done properly, the IRFA is an excellent focus for assessing compliance costs under the PRA and would provide the Commission with an analysis of what is required by its proposed rules and the

⁴ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. § 601 et seq.).

⁵ Pub. L. No. 104-121, 110 Stat. 857 (1996) (codified at 5 U.S.C. § 612(a)).

⁶ Pub. L. No. 104-13, 109 Stat. 163 (1995) (codified at 44 U.S.C. § 101 et seq.).

⁷ 44 U.S.C. § 3506(c)(1)(A).

⁸ 44 U.S.C. § 3506.

⁹ 5 U.S.C. § 603.

burden they impose on small entities. Advocacy asserts that the FCC cannot fulfill its statutory duty to estimate its PRA compliance burdens with “specificity” if it has not first identified fully what is required. The RFA and PRA complement each other and are tools through which the FCC can reach a reasoned decision in its rulemaking. Advocacy filed Comments and Reply Comments with the Commission, dated September 25 and October 16, 1998 respectively, on several material deficiencies in the FCC’s IRFA.¹⁰ We assert that similar deficiencies are also present in the Commission’s PRA estimates.

The Commission is required, *inter alia*, to solicit comments from the public and the Office of Management and Budget (“OMB”) and to receive OMB’s approval before it may conduct a collection of information.¹¹ In its review of executive branch and independent federal agency rulemaking, OMB must ascertain, consistent with the PRA, whether the Commission justified the necessity of its collection of information, accurately calculated the estimated burden, and “minimize[d] the Federal information collections burden, with particular emphasis on those individuals and entities most adversely affected.”¹²

The Commission published its request for comments on the proposed information collections contained in the *NPRM* in the Federal Register¹³ on Aug. 24, 1998 (“PRA Notice”). In its request for comments, the Commission identified three information collections, the first of which actually contains two separate collections to be addressed separately: (1) listing of approved collocation equipment based on safety standards, (2) report of all ILEC equipment used

¹⁰ Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, in CC Dkt. No. 98-147, at 11 (Sept. 25, 1998) (“Advocacy Comments”); Reply Comments of the Office of Advocacy, U.S. Small Business Administration, to the *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, in CC Dkt. No. 98-147, at 4 (Oct. 16, 1998) (“Advocacy Reply Comments”).

¹¹ 44 U.S.C. § 3507(a)(2).

¹² 44 U.S.C. § 3504(c)(3).

¹³ 63 Fed. Reg. 45,140 (1998).

at the central office, (3) collocation space report, and (4) local loops and OSS information.

Advocacy submits the following comments below for OMB's consideration and evaluation.

1. Report of Approved Equipment for Collocation at the Central Office Based on Safety Standards.

The Commission proposed that incumbent local exchange carriers ("ILECs") maintain a list of all approved equipment based on safety standards placed by a new entrant for collocation at the central office of the ILEC.¹⁴ It appears that this collection of information is separate from the report on all "equipment in use" as discussed below.

a. Necessity of the Proposed Collection of Information.

ILECs may require competitive local exchange carriers ("CLECs") to collocate equipment that meets safety standards, such as fire prevention specifications. Although the Commission does not state the purpose of the information collection outright, if CLECs have access to this list, they can quickly determine which equipment can be collocated at ILEC central offices, which will speed of deployment of advanced telecommunications services.

Advocacy believes that ensuring that collocated equipment does not endanger other competing carriers' equipment is a laudable goal. As long as the safety standards for equipment are reasonable and competitively neutral, the standards will remove ambiguity of whether certain types of equipment are acceptable for collocation

b. The Accuracy of the FCC's Burden Estimates.

To comply with the proposed collection of information, the ILEC must review every type and brand of equipment that could be used in interconnection with its equipment and determine if it meets safety standards. Then the ILEC must create the list and make it available for requesting CLECs, which involves drafting, data entry, and printing costs. The Commission

¹⁴ *Id.* para. 134.

greatly underestimates the compliance burden on respondents for both time and cost. First, the Commission unreasonably estimates the cost per respondent as \$0.¹⁵ Moreover, the Commission estimates that it will take only one hour to comply with the approved equipment list requirement.

After considering what is required to comply with the proposed information collection, Advocacy believes that one hour cannot be sufficient and the costs are certainly not zero. The initial review of all types of collocated equipment for safety hazards could take days. The drafting and printing the report also entail costs to respondents in both employee hours and equipment. The Commission did not substantiate its estimates adequately in the PRA Notice, as it did not provide any objective support for its one-hour and zero-cost estimate in the PRA Notice, the *NPRM*, or the IRFA.

c. Ways to Minimize the Burden of the Collection of Information on the Respondents.

The most burdensome requirement of the information collection is the time and cost of reviewing equipment. Advocacy encourages the FCC to consider alternatives that lessen this burden and whether it is possible for industry to establish a uniform list of all types of equipment used for collocation that details compatibility and safety requirements. This list could be used as a checklist for all ILECs.

2. Report of All ILEC Equipment Used at the Central Office.

In the *NPRM*, the Commission also proposed that ILECs maintain a list of all its “equipment used” at the central office.¹⁶

¹⁵ PRA Notice.

¹⁶ *NPRM*, para. 134.

a. Necessity of the Proposed Collection of Information.

The Commission proposed this collection of information as a means of determining which equipment an ILEC uses at the central office and whether that equipment meets safety standards under the Bellcore Network Equipment and Building Specifications (NEBS) requirements. As a companion reporting requirement to the listing of approved equipment, the list of equipment the ILEC uses would determine what equipment the CLEC may use, whether they may use equipment that meets approved safety standards or whether they have a right to collate the same or equivalent equipment similar to that used by the ILEC that does not meet safety standards.

b. The Accuracy of the FCC's Burden Estimates.

The ILEC must also inventory of every piece of equipment it uses in the central office, which may be extensive if the ILEC has many central offices that were designed and equipped in different manners. This is especially so for a small ILEC which grows slowly over the years or updates its equipment on an as-needed basis. The ILEC must create the list and make it available for requesting CLECs, which involves drafting, data entry, and printing costs, separate from the listing of approved equipment.

The Commission did not include any estimate of costs or employee hours in the PRA Notice. Advocacy believes that an accurate estimate by the Commission is required before the agency can receive OMB approval for this collection of information requirement.

c. Ways to Minimize the Burden of the Collection of Information on the Respondents.

If at all possible, the report on the equipment an ILEC uses and all approved equipment based on safety standards (discussed above) should be streamlined and combined if possible.

3. Report on the Collocation Space.

The Commission proposed an information collection requirement for an ILEC to submit a report to a requesting CLEC on the ILEC's available collocation space.¹⁷ The *NPRM* indicated that the report should: (1) specify the amount of collocation space available at each requested premise; (2) the number of collocators; (3) any modifications in the use of collocation space since the last report; and (4) include measures that the ILEC is taking to make additional space available for collocation.¹⁸

a. Necessity of the Proposed Collection of Information.

The Commission has proposed this collection of information as a means of stopping ILECs from denying collocation requests on the basis of space limitations at the central office. In theory, these reports would provide an objective "snapshot" of conditions at the central office. Advocacy understands the necessity of placing requirements on ILECs to encourage collocation, which is necessary for competition at the local level. However, Advocacy believes that this reporting requirement imposes a burden on small ILECs that is disproportionate to the benefit to CLECs.¹⁹

b. The Accuracy of the FCC's Burden Estimates.

The proposed information collection places a large burden on respondents. An ILEC would be required to create a separate report for each central office. The ILEC would have to pull floor plans for each central office to determine collocation space available. Interconnection agreements would have to be reviewed to determine the number of collocators present. Furthermore, this is not a one-time effort. The ILEC is required to continually update the report by listing any changes from the last report, which would happen every time a collocator or the

¹⁷ *NPRM*, para. 147.

¹⁸ *Id.*

size of the collocation space changed. The ILEC must compile this information and make it available for all requesting CLECs, which involves drafting, data entry, and printing costs.

Due to the number of central offices that are part of an ILEC's network, the reporting requirement is burdensome even for large ILECs who have extensive resources. Also, the FCC tentatively concluded to require interconnection at remote terminals.²⁰ Therefore, ILECs may be required to produce collocation space reports for remote terminals as well, which would increase the number of reports still further.

Again, in the PRA Notice, the Commission estimated the response time as one hour and estimated the cost per respondent as \$0. This estimate defies the reality of the burden. We have detailed above the effort necessary to complete the collocation space reports. To prepare a single report could take an employee days. This effort is compounded as each ILEC has anywhere from dozens to hundreds or even thousands of central offices. It is not feasible for an ILEC to complete all the steps necessary in one hour. The Commission vastly underestimates the compliance burden on ILECs and gives an unreasonable estimate of the cost in the PRA Notice.

c. Ways to Minimize the Burden of the Collection of Information on the Respondents.

Advocacy presented several alternatives to the collocation space report in its comments to the Commission in response to the *NPRM*. As stated in those comments, Advocacy recommends that the Commission consider alternatives for small ILECs who do not have the resources to comply with large information collections.²¹ First, the Commission should consider exemptions for small ILECs either in part or in whole from the collocation space report. Also, the

¹⁹ Advocacy Comments at 11.

²⁰ *NPRM*, para. 174.

²¹ Advocacy Reply Comments at 4.

Commission should consider allowing a small ILEC to make a collocation space report which applies to many central offices at once, particularly central offices that have a great deal of similarity in space and collocators. The FCC should consider a longer timetable for small ILECs to produce the reports. Furthermore, the record supports additional alternatives such as those proposed in GST Telecom's Comment, which recommends alternatively a site visit or a report.²² Advocacy recommends a multi-step approach. Small ILECs would be required to produce these reports for the largest central or for central offices that receive the most collocation requests. As time progresses, small ILECs would be required to have more and more collocation reports. Adoption of these alternatives would allow the CLECs to receive collocation information but would ease the reporting burden on small ILECs.

4. Report on Local Loops and OSS Information.

In the *NPRM*, the Commission tentatively concluded that ILECs must provide CLECs with detailed loop information.²³ Specifically, the Commission proposed requiring ILECs to provide requesting CLECs with the following information: (1) whether the loops pass through remote concentration devices; (2) what electronics are attached to loops; (3) condition and location of loops; (4) loop length; (5) electrical parameters that determine the suitability of loops of various digital subscriber line ("xDSL") technologies; and (6) other loop quality issues.²⁴

a. Necessity of the Proposed Collection of Information.

The Commission imposed this collection of information requirement so that CLECs could make an independent determination about whether the loop is capable of supporting xDSL equipment. However, the necessity of this collection of information is undermined by several

²² *Id.*

²³ *Id.* para. 157.

other proposed regulations that would encourage interconnection and competition.²⁵ These proposed regulations lessen the importance and necessity of the detailed loop reports to ensuring interconnection and competition.

Furthermore, the information collection may actually run counter to the FCC's stated goal of encouraging deployment of advanced telecommunications services. As discussed below, the burden of compliance is extensive. Small ILECs would have to devote so many resources to comply with the requirement they would be limited in their ability to deploy new technologies and services. Advocacy believes that the burden of local loops and OSS information reports on small ILECs outweighs the benefit to the CLECs, does not further the deployment of advanced telecommunications services, and, therefore, is not necessary.

b. The Accuracy of the FCC's Burden Estimates.

The proposed report on detailed loop information will impose a significant economic burden on small ILECs. Although the Commission's explanation in the *NPRM* is vague, Advocacy interprets this requirement as necessitating a separate report on each loop, as loops will vary in length, location, quality, and attachment of electronics. Therefore, a small ILEC must produce a separate report for each of its loops. These reports would contain detailed specific information such as equipment attached, location, and length, while included interpreted information, such as the suitability of the loop for xDSL technology. The detailed loop information reports require substantial clerical and technical preparation, which places a disproportionate burden on small ILECs who have fewer resources than larger ILECs.

The Commission again unreasonably estimates that it will take one hour for an ILEC to

²⁴ *Id.*

²⁵ The Commission proposed to place the burden on ILECs to demonstrate that it is not technically feasible to provide requesting carriers with xDSL-compatible loops (*Id.* para. 167), to provide a particular type of interconnection requested by the CLEC (*Id.* para. 171), and to provide the CLEC with an equal alternative if

The Commission again unreasonably estimates that it will take one hour for an ILEC to produce the reports on all of the ILEC's loops and cost the respondents \$0. Advocacy finds this unsubstantiated estimate to be drastically undervalued. Advocacy believes that it would be difficult for an ILEC to print the reports in an hour, much less compile the data and analyze the loop for use of xDSL technology. The proposed information collection is a massive undertaking, requiring a separate report for each loop, each of which goes into precise technical detail on the characteristics of the report. The FCC either did not consider adequately the scope of this burden or chose to ignore it.

c. Ways to Minimize the Burden of the Collection of Information on the Respondents.

Since Advocacy does not believe that the local loops and OSS information reports are necessary, the only appropriate means of minimizing the burden is not to impose it in the first place.

Conclusion

Advocacy believes only three of the four collection of information proposals presented in the PRA Notice potentially advance the Commission's goal of deploying advanced telecommunications services. The fourth proposed collection of information, the local loop and OSS information reports, does not forward that goal and needs to be rejected for this reason alone.

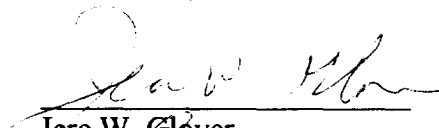
Additionally, the Commission has substantially underestimated the compliance burdens on carriers for all four collections of information because it did not analyze the impact of its requirements on all respondents, especially small entities. Moreover, the Commission did not provide a specific, objectively supported estimate of burden as required by the Paperwork Reduction Act. Instead, the agency provided absurdly low estimates of both the cost of

compliance and time per response.

Therefore, before approving any of these proposals, OMB should require modifications to (1) the listing of approved collocation equipment based on safety standards, (2) the report of all ILEC equipment used at the central office, (3) collocation space report, and (4) the local loop and OSS information reports and make these requirements consistent with the PRA and RFA. All four proposals impose significant burdens on small and large ILECs alike, and OMB should deny approval, pending modification of the burden estimate.

Procedurally, the Commission should first revise its IRFA, taking into account Advocacy's and other comments, and then revise its PRA information collection estimates based upon objective information gathered from a sufficient IRFA. The revised IRFA and PRA estimates, subject to public notice and comment, will enable the Commission to elicit information known only to practitioners to avoid erecting unreasonable barriers to competition.

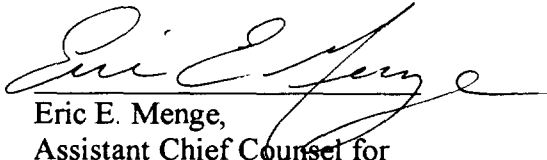
Respectfully submitted,



Jere W. Glover,
Chief Counsel for Advocacy



S. Jenell Trigg,
Assistant Chief Counsel for
Telecommunications



Eric E. Menge,
Assistant Chief Counsel for
Telecommunications

October 26, 1998